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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,674

11/25/2003

William Martin Silvis

67,023-018

7249

26096

7590

08/18/2004

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EXAMINER

RAEVIS, ROBERT R

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/722,674	Applicant(s) SILVIS ET AL.	
	Examiner Robert R. Raevis	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-3, 5, 6, 8-11, 13, 14, 18, 19 is/are rejected.  
 7) ☒ Claim(s) 4, 7, 12, 15-17 and 20 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 3/2/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,481,299. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 of the application is broader than claim 6 of the patent, and thus is obvious.

Claims 1 and 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 1, 3 or 5 of US Patent 6,742,407. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 6 of the patent are broader than any one of the listed patent claims.

Claim 8 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 4, 3, 6, or 2 of US Patent 6,742,407. Although the conflicting claims are not identical, they

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are not patentably distinct from each other because claims 8 and 11 of the patent are broader than any one of the listed patent claims.

Claim 14 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 3,6,5 or 2 of US Patent 6,742,407. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 14 of the patent is broader than any one of the listed patent claims.

Claims 1,3,6,8,9-11,18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis '595 in view of Colvin.

Lewis teaches (Figure 1) a sampler, including: transfer tube assembly including a pipe 14 (i.e. probe) having ends, an mixer 16 that receives an end of the probe, the mixer including a dilution gas passageway 17, and tunnel connected to the mixer including a mixing passageway (line to the right of element 27) extending a length that mixes gases with an orifice 27 between the probe and mixing passageway, the exhaust gas and dilution gas commingling prior to flow through the orifice along region 15.

Lewis does not refer to "an outer tube surrounding at least a portion of said probe to define an insulator cavity".

As to claims 1,6,8,9,11, it would have been obvious to employ an "outer tube" around the probe because Colvin teaches (col. 3, lines 40-55) use of an insulating air around an exhaust probe to aide in preventing condensation during sampling.

As to claims 3,10, note the tapering of Lewis's element 27 to the right of the section with minimum diameter.

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As to claim 18,19, Colvin teaches measuring temperature of the exhaust along the probe to assure that the surrounding temperature is such that condensation is avoided, suggestive of measurement of the temperature or Lewis's probe.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Colvin as applied to claim 1 above, and further in view of Decker et al. '178.

As to claims 2, 5, note Decker's flange 10 teaching as a manner of securing fluid carrying elements of an exhaust gas sampler in a leak resistant manner, suggestive of use of flanges to connect various elements (15,27,element to the right of element 27) to construct Lewis's assembly.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Colvin as applied to claim 8 above, and further in view of Breton '014.

As to claim 13, it would have been obvious to employ a threaded connection between Lewis's probe and mixer because Breton teaches (col. 6, lines 18-22) use of threaded connections to secure exhaust probes to a conduit of interest. Lewis's schematic connection is suggestive of any known probe coupling method, suggestive of Breton.

Regarding Applicant's REMARKS, consider the following:

As to p. 8, first full paragraph; colvin teaches use of both heat and a temperature sensor to avoid condensation to assure that exhaust gas passing to an analyzer is representative of that leaving a vehicle, suggestive of heating Lewis's probe 14.

As to p. 8, second full paragraph; the outstanding rejection does contemplate the "right" half.

As to p. 9, first full paragraph; please look at Figure 1 of Lewis. A fluid system of such a nature includes a plurality of individual fluid element secured together in some manner. It is Reference Decker that suggests use of a flange to allow for a connection. Of course, there are many more techniques of connection, but Lewis's schematic illustration suggests any known (Decker) type of connection.

Claims 4,15,7,16,12,17,20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raemis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Robert*

RAEMIS